Concerns about HB4171 – Michigan Advocacy Project

My name is Jim Schaafsma. I am here on behalf of the Michigan Advocacy Project, and I am the housing attorney at the Michigan Poverty Law Program, which provides support for legal advocates for Michigan's low income residents. Thank you for the opportunity to comment on HB4171. As drafted, HB 4171 presents several issues of concern, including:

Windfall for Landlords

If enacted, HB4171 would allow landlords to recover more than their actual damages in summary proceedings eviction cases where the court determined that a landlord was entitled to damages for a tenant's injury to the rental premises,. This financial windfall for landlords could occur because the bill would allow them to be compensated for their labor in making repairs at "standard industry wages". The following example illustrates this windfall potential:

A court determines that a landlord is entitled to damages for injury to rental property under the eviction law - damage to a kitchen faucet. The landlord who is not a licensed plumber, does the repair work herself (or more likely has an unlicensed maintenance worker, who she employs, and pays much less than a licensed plumber charges, do it). It takes her or her employee (who we'll say earns $15/hour) 5 hours to do work a licensed plumber could do in 2. She asks the court to compensate her at the standard industry wage for a plumber (we'll say $75/hour). Under HB4171, it would apparently be proper for the court to award the landlord $375 (5 hours @ $75/hour) in damages for repairs that cost her $75.

It is difficult to imagine a sound public policy basis for this windfall. As well, beyond being vague and offering little guidance concerning the method for determining "standard industry wages" and related issues, HB4171, as a result of its damages "multiplier", would create incentive for landlords to do more work than necessary and overstate the time it took to do repair work, and open up opportunity for other types of abuse and misrepresentation.

Interestingly, the bill does not provide that tenants who are forced to make repairs because their landlords are not fulfilling their repair and maintenance obligations would be entitled to the same compensation/rent deduction rate. In other words, the stature creates two different ways to calculate damages—one for landlords and another for tenants. The legislature should be extremely careful in considering legislation that explicitly favors one class of citizens (landlords) at the expense of another class of citizens (tenants). Why does one class need or deserve preferential treatment under the law—and why the does the disadvantaged class deserve this discrimination?

Radical change in way damages work in Michigan

This approach to damages HB4171 takes contradicts the established principle that the purpose of damages is to compensate a person for loss caused by the wrong of another person. In the case or reparable damages to a house the measure of damages is the cost of repairs. See *American Employers Insurance Co. v. Owens*, 48 Mich App. 139 (1973) Under HB4171, a landlord could be awarded damages substantially beyond its actual costs of repair. Such "super" damages would effectively subject a tenant to punitive damages (the purpose of which is to punish), a type of damages that Michigan law does not generally recognize. So, HB4171, for unstated reasons, would radically alter the established method of awarding damages in Michigan.

Summary proceedings is not the forum for awarding the "super" damages proposed

Summary proceedings are a peculiar type of civil action. As the name implies, they move quickly through the court system, as compared to general civil actions, and so, they give landlords seeking to recover possession of premises a tremendous advantage comparative to tenants. As a result of the speed with which these cases proceed, and because many tenants think

that the issue of possession is all that the case involves and they concede that issue, the rate at which defendant tenants do not appear (default) is high. So, to allow landlords to recover the "super" damages that HB4171 proposes would be especially unfair and ill-advised. This point becomes only stronger when considering that tenants are disproportionately low income. Interestingly, the bill does not provide that tenants who are forced to make repairs because their landlords are not fulfilling their repair and maintenance obligations would be entitled to the same compensation/rent deduction rate as their landlords.

In its current form, MCL 600.5739 allows a landlord to recover its actual costs for making repairs to injury to rental premises under the circumstances outlined in that section. HB4171 would change this arrangement, without sensible or legitimate reason, other than to offer a boondoggle to landlords. In doing so, HB4171 would also abandon a basic principle of the law of damages. These and other reasons (such as constitutional due process implications) make it impossible to conclude that HB4171 would promote sound public policy.